

The term “winners and losers” sprang up several times on Thursday in a congressional subcommittee hearing on expired or soon-to-expire tax provisions. Congress should not pick them, witnesses contended. However, they also lined up to tell the House Ways and Means Select Revenue Subcommittee why a particular tax credit or break should be extended or made permanent.

And the clear “winner” was the Sec. 41 research and development (R&D) tax credit, favored by many Republican and Democratic lawmakers alike. Rep. Erik Paulsen, R-Minn., was one of several lawmakers who noted that the R&D credit has been allowed to expire 14 times and should be made permanent. He also called for changes to the credit, stating that “the IRS makes it difficult to comply with.” Rep. Kevin Brady, R-Texas, echoed his support, mentioning that his bill (H.R. 942) would increase the amount of the alternative simplified credit from 14% to 20% of qualified expenditures.

In December 2010, Congress extended various expired and expiring tax provisions through Dec. 31, 2012. Most of these provisions had expired at the end of 2009 and were among temporary provisions that have typically been extended numerous times over recent years as part of the annual package of “tax extenders.”

Only members of Congress who had sponsored legislation to repeal, extend, or make permanent one of the extenders could testify at Thursday’s hearing. “For too long,” subcommittee chairman Pat Tiberi, R-Ohio, remarked, “Congress has rubber stamped the extender package” without examining their effectiveness. The ones that are worthy should be made permanent, he said, noting that it may not happen until comprehensive tax reform occurs.

What was striking about the hearing was not the arguments for why certain tax credits or deductions should endure (certainty for taxpayers, job creation, and energy conservation ranked high as reasons) but rather the frequent comments from both sides of the aisle praising the same items in a body known for its partisanship. Even Tiberi noted one unusual pairing: “Let the record show that Rep. Richard Neal [D-Mass.] and Steve King [R-Iowa] agree.”

Extension of the subpart F active financing income exception (Secs. 953(e) and 954(h)) has key backing as well. Chairman Tiberi called it one of the most important expired provisions, and

Neal, ranking Democrat on the subcommittee, echoed his support.

Other extenders that were extolled by lawmakers include:

- New markets tax credit—created to encourage investment in economically distressed areas and supported by Reps. Neal and Charles W. Boustany Jr., R-La., chairman of the Oversight subcommittee.
- Leasehold depreciation—15-year straight-line cost recovery for qualified leasehold improvements, restaurant buildings and improvements, and retail improvements (Sec. 168(e)(3)(E)). This was also supported by Neal and Boustany, who criticized the 39-year timeline that would return for restaurants if the 15-year depreciation period is allowed to expire as “nowhere near reality.”
- Deductibility of state and local sales taxes on Schedule A (Sec. 164(b))—described by Brady as “middle-class relief in a big way.” The Joint Committee on Taxation recently estimated that in 2012, taxpayers will claim approximately \$291.5 billion of these taxes on federal returns.
- Transit subsidy—the maximum amount an employee can exclude from income for employer-provided transit passes and transportation in a commuter highway vehicle for 2012 is \$125 per month, down from \$230 per month in 2011 (Sec. 132(f)). “At a time of high gas prices, it makes no sense to penalize commuters,” said Rep. James McGovern, D-Mass., sponsor of a bill (H.R. 2412) to provide parity between public and private transit commuters.
- **Mutual fund flowthrough—Rep. John Campbell, R-Calif., cosponsor of H.R. 4623, told the committee that the benefit does not change investors’ tax liability, just the timing of the payment.**
- Energy production—support for which tax break should stay varied among members according to energy source. Rep. Brian Bilbray, R-Calif., argued forcefully for nuclear energy. “Natural gas should be the last choice” he said, while others called for wind, biomass, or natural gas incentives.

